

REMARKS

This amendment is in response to the Office Action dated December 14, 2004. By said Action, drawing corrections were required due to a misunderstanding caused by the terminology in Claim 10, which was rejected under 35 U.S.C. 112. Claims 1–2, 4–5 and 7 were rejected under 35 U.S.C. 103 as obvious over Pita et al (5,171,081) in view of Steigerwald et al (5,570,222). Claims 12–13 were rejected under 35 U.S.C.103 as obvious over Kurdian (6,474,467). Claims 3–6 and 9 were indicated as allowable if rewritten in independent form.

By this amendment, Claims 3, 6 and 9 have been rewritten in independent form as amended Claims 1, 5 and 8 respectively. They, along with their dependent Claims 4, 7, 10 and 11 are therefore in allowable condition. Claims 2, 3, 6, 9, 12 and 13 have been cancelled. Claims 15–17 have been added. Claims 1, 4, 5, 7, 8, 10, 11 and 15–17 appear in the application.

Claim 10 has been amended to remove the ambiguity in the terminology, rendering its rejection under 35 U.S.C. 112 moot, as well as obviating the requirement for corrected drawings. A new set of claims 15–17, drafted in order to more clearly define the present invention and to more sharply distinguish it over the references cited in the Official Action. Favorable reconsideration of the application is respectfully requested in the light of these amendments and the following remarks.

New Claim 15 is patterned after original Claim 1, but has been amended to clearly bring out, among other features, that the chemiluminescent vessel includes a rotatable cap effective to rupture the frangible barrier during rotation of the cap. Original Claim 1 was rejected on the combination of Pita et al, US Patent 5,171,081 in view of Steigerwald et

al US Patent 5,370,222. It is submitted that neither of these references, whether taken singly or in combination, discloses or renders obvious the combination now recited in new Claim 14.

Thus, Pita et al discloses a chemiluminescent cup which is open at the top, and therefore does not include a cap at all. Steigerwald et al, on the other hand, discloses a container for mixing the contents of the container with another component (in this case a powder), which is within a receptacle (3) carried by a cap of the container such that rotating the cap cuts the foil (8) within the receptacle (3) to permit the contents of that receptacle to drop into the container, and thereby to mix with the liquid (10) therein.

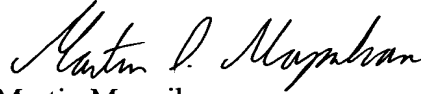
It is submitted that modifying the primary reference, Pita et al, in the light of the secondary reference, Steigerwald et al, as suggested by the Examiner, would not involve an obvious modification of the primary reference under 35 U.S.C 103(a); rather, it would involve a complete reconstruction of the primary reference in the light of applicant's disclosure, and not in the light of the secondary reference. Moreover, even if this modification were to be made, the result would not be the article defined in Claim 15, but rather would be a completely different article wherein the material (powder 9 of the secondary reference) would be mixed with the fluid within the container itself (liquid 10), and not with the fluid in the chamber between the two walls of the container.

The other references cited by the Examiner have also been considered, but are believed to be sharply distinguished by Claim 15 as now drafted.

Claims 16–17, depend from Claim 15, are therefore also submitted to be allowable with that claim, apart from the further features set forth in the respective dependent claims.

In view of the foregoing, it is believed that Claims 1, 4, 5, 7, 8, 10, 11 and 15-17 are in allowable condition, and this application is now in condition for allowance. An early notice of allowance is therefore respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, reading "Martin D. Moynihan".

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